

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

ANDRES ARZA,

Defendant.

CASE NO. 8:07CR359

MEMORANDUM AND ORDER

This matter is before the Court on the government's appeal (Filing No. 38) from the Magistrate Judge's order (Filing No. 35) denying the government's motion to continue trial (Filing No. 34).

In its motion to continue, the government requested that trial be continued for one week for reasons including the unavailability of the government's case agent and material witness. (Filing No. 34.) The motion was denied. (Filing No. 35.) Contemporaneously with these events, the Defendant has expressed a desire to plead without a plea agreement to Counts II through VII of the Indictment and proceed to trial on Count I.

The court has reviewed the order from which this appeal has been taken. In an appeal from a magistrate judge's order on a pretrial matter within 28 U.S.C. § 636(b)(1)(A), a district court may set aside any part of the magistrate judge's order shown to be clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); NECrimR 57.2(c).

While the undersigned Judge respects the Magistrate Judge's discretion exercised in this matter, good cause has been shown for the extension by the government as well as through recent events surrounding the anticipated change of plea with respect to Counts

II through VII. Speedy trial will be excluded pursuant to 18 U.S.C. §§ 3161(h)(3)(A) (unavailability of an essential witness) & 3161(h)(8)(A) (ends of justice). The Court finds that, under the circumstances presented, the ends of justice outweigh the best interests of the Defendant in a speedy trial in light of the factors discussed above and failure to grant a continuance would result in a miscarriage of justice. 18 U.S.C. §§ 3161(h)(3)(A), (h)(8)(A) & (h)(8)(B). Therefore, the government's appeal is granted.

IT IS ORDERED:

1. That the government's appeal from the Magistrate Judge's Order (Filing No. 38) is granted;
2. The Magistrate Judge's previous order (Filing No. 35), is overruled;
3. Trial in this matter is continued to **Tuesday, May 6, 2008, at 9:00 a.m.**, with the attorneys meeting in chambers at **8:30 a.m.**; and
4. The time between today's date and the trial date is excluded for purposes of computing the limits under the Speedy Trial Act because the ends of justice outweigh the best interest of the Defendant in a speedy trial and for the reasons stated in the Memorandum. 18 U.S.C. §§ 3161(h)(3)(A), (h)(8)(A) & (h)(8)(B). Any objection to this speedy trial exclusion must be filed within five (5) working days of the filing date of this Order.

DATED this 20th day of March, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge